

No. 14370

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United States  
Court of Appeals  
for the Ninth Circuit.

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WILLIAM CHERNEKOFF, JR.,  
Appellant,  
vs.  
UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record

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Appeals from the United States District Court for the  
Southern District of California,  
Central Division.

**FILED**

JUL 16 1954

PAUL P. O'BRIEN  
CLERK



No. 14370

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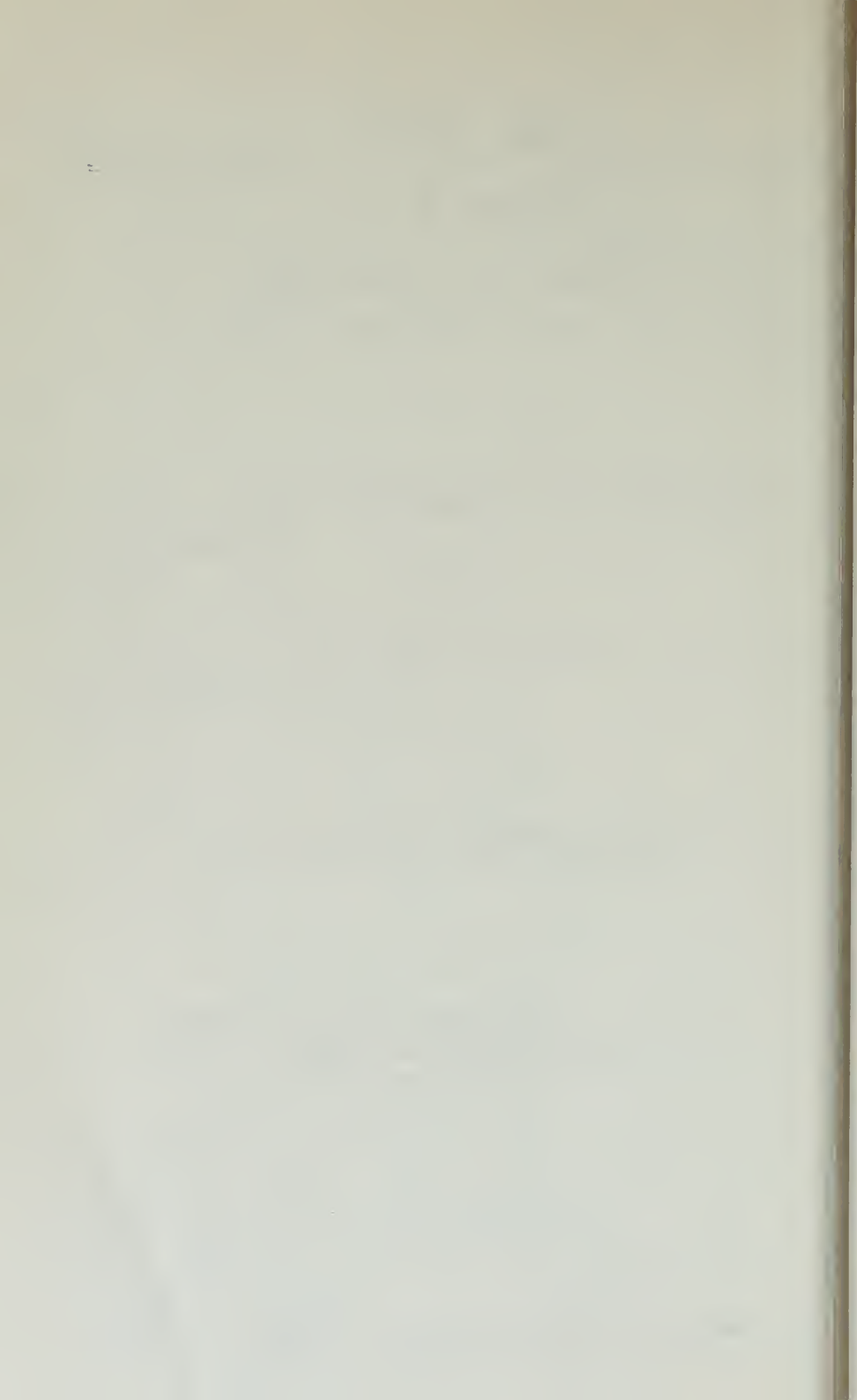
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

J. B. Tietz,  
257 S. Spring St.,  
Los Angeles, 12, Calif.

For Appellee:

LAUGHLIN E. WATERS,  
United States Attorney;  
LOUIS L. ABBOTT,  
BRUCE I. HOCHMAN,  
Assistants U. S. Attorney,  
600 Federal Bldg.,  
Los Angeles 12, Calif.





In the United States District Court in and for  
the Southern District of California, Central  
Division

No. 23223-CD

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM CHERNEKOFF, JR.,

Defendant.

INDICTMENT

[U. S. C., Title 50, App., Sec. 462—Universal  
Military Training and Service Act.]

The grand jury charges:

Defendant William Chernekoff, Jr., a male person within the class made subject to selective service under the Universal Military Training and Service Act, registered as required by said act and the regulations promulgated thereunder and thereafter became a registrant of Local Board No. 113, said board being then and there duly created and acting, under the Selective Service System established by said act, in Los Angeles County, California, in the Central Division of the Southern District of California; pursuant to said act and the regulations promulgated thereunder, the defendant was classified in Class I-A-O and was notified of said classification and a notice and order by said board was duly given to him to report for induction into the armed forces of the United States of America on August 11, 1953,

in Los Angeles County, California, in the division and district aforesaid; and at said time and place the defendant did knowingly fail and neglect to perform a duty required of him under said act and the regulations promulgated thereunder in that he then and there knowingly failed and refused to be inducted into the armed forces of the United States as so notified and ordered to do.

A True Bill.

/s/ L. A. SEE,  
Foreman.

/s/ LAUGHLIN E. WATERS,  
United States Attorney.

[Endorsed]: Filed November 12, 1953. [2\*]

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[Title of District Court and Cause.]

### STIPULATION

It Is Hereby Stipulated and Agreed by and between the United States of America, Plaintiff, and William Chernekoff, Jr., Defendant, in the above-entitled matter, through their respective counsel, as follows:

That it be deemed that the Clerk of Local Board No. 113 was called, sworn and testified that:

1. She is a clerk employed by the Selective Service System of the United States Government.
2. The defendant, William Chernekoff, Jr., is a registrant of Local Board No. 113.

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

3. As Clerk of Local Board No. 113, is legal custodian of the original Selective Service file of William Chernekoff, Jr.

4. The Selective Service file of William Chernekoff, Jr., is a record kept in the normal course of business by Local Board No. 113, and it is the normal course of Local Board No. 113's business to keep such records. [3]

It Is Further Stipulated that a photostatic copy of the original Selective Service file of William Chernekoff, Jr., marked "Government's Exhibit 1" for identification, is a true and accurate copy of the contents of the original Selective Service file on William Chernekoff, Jr.

It Is Further Stipulated that a photostatic copy of the Selective Service file of William Chernekoff, Jr., marked "Government's Exhibit 1" for identification, may be introduced in evidence in lieu of the original Selective Service file of William Chernekoff, Jr.

Dated this . . . day of December, 1953.

LAUGHLIN E. WATERS,  
United States Attorney;

RAY H. KINNISON,  
Assistant United States Attorney, Chief of Criminal  
Division.

/s/ BRUCE I. HOCHMAN,  
Assistant U. S. Attorney,  
Attorneys for Plaintiff.

*William Chernekoff, Jr., vs.*

/s/ WILLIAM CHERNEKOFF, JR.,  
Defendant.

It Is So Ordered this 14th day of December, 1953.

/s/ HARRY C. WESTOVER,  
United States District Judge.

[Endorsed]: Filed December 14, 1953. [4]

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[Title of District Court and Cause.]

MINUTES OF THE COURT—DEC. 28, 1953

Present: The Hon. Harry C. Westover,  
District Judge.

Proceedings: For further trial (decision).

Court Finds defendant Guilty as charged in Indictment.

Court sentences defendant to three years' imprisonment for offense charged in Indictment, and Grants stay of execution of said sentence until Jan. 11, 1954, 2 p.m.

It Is Ordered that bond of defendant be exonerated upon surrender of defendant to Marshal for service of sentence.

Court Recommends commitment to Federal Road Camp at Tucson, Ariz.

Defendant advised of right to appeal under Rule 37.

EDMUND L. SMITH,  
Clerk;

By E. M. ENSTROM, JR.,  
Deputy Clerk. [5]

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United States District Court for the Southern  
District of California, Central Division

No. 23,223—Criminal

UNITED STATES OF AMERICA,

vs.

WILLIAM CHERNEKOFF, JR.,

### JUDGMENT AND COMMITMENT

On this 28th day of Dec., 1953, came the attorney for the government and the defendant appeared in person and without counsel; the Court advised the defendant of his right to counsel, and the defendant having waived counsel,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a finding of guilty of the offense of knowingly failing to be inducted into the armed forces of the United States, in violation of U.S.C., Title 50, App., Sec. 462, as charged in the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no

sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three years.

It Is Adjudged that execution of sentence is stayed until Jan. 11, 1954, at 2 p.m.

It Is Ordered that bond of defendant be exonerated upon surrender of defendant to Marshal for service of sentence.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY C. WESTOVER,

United States District Judge.

The Court recommends commitment to: Federal Road Camp, Tucson, Ariz.

[Endorsed] Filed December 28, 1953. [6]

[Title of District Court and Cause.]

NOTICE OF MOTION

To: Laughlin E. Waters, United States Attorney.

Please take notice that defendant-appellant will present his Motion for New Trial to the Honorable Harry C. Westover, on March 15, 1954, 2 p.m., or as soon thereafter as the matter may be heard, in the courtroom of said Judge in Los Angeles.

/s/ J. B. TIETZ,

Attorney for Defendant-  
Appellant. [7]

Motion for New Trial

The defendant moves the court for an order granting him a new trial for the following reason:

I.

Newly Discovered Evidence

After defendant's trial and conviction [defendant having conducted his defense without benefit of counsel] it was learned by defendant, for the first time:

One: That he had been entitled to receive a notice from the Hearing Officer of the Department of Justice that contains a statement advising him of his right to request of said officer the general nature and character of adverse information in the possession of said officer; that the notice he received was

an obsolete and defective version; defendant desires to submit to the court, as evidence, said three page notice and the stamped envelope addressed to him;

Two: That the local board should have posted a notice advising its registrants that advice on all matters connected with processing of registrants could be procured from a selective service official, termed an Advisor to Registrants [as required by 32 C.F.R., §1604.41].

Defendant learned of said two facts only after his cousin, William Kariakin, who had been processed in a parallel manner through their entire selective service history, was acquitted by Judge Peirson Hall, January 12, 1954, Case No. 23221, on identical facts and solely because of aforesaid two identical facts. A copy of said Kariakin decision is set forth herein as an appendix to the Points and Authorities, attached hereto.

/s/ WILLIAM CHERNEKOFF, JR.

/s/ J. B. TIETZ,  
Attorney.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 3, 1954. [8]



[Title of District Court and Cause.]

AFFIDAVIT OF WILLIAM CHERNEKOFF,  
JR., IN SUPPORT OF MOTION

William Chernekoff, Jr., being first duly sworn, deposes:

1. I am the defendant in the above-captioned prosecution.

2. I represented myself in propria persona at my trial in the district court and had no attorney to help me in any portion of it, or preparation for it.

3. After my conviction I commenced an appeal, with the aid of the court clerk and subsequently employed attorney J. B. Tietz to represent me.

4. I was soon thereafter asked by Mr. Tietz to locate, if possible, and bring to him the three page mimeographed Notice of Hearing sent me by the Hearing Office of the Department of Justice; I did this.

5. On Monday, March 1, 1954 at 9 p.m., in the office of Mr. Tietz I asked him to explain the set of papers he instructed me to sign, said papers being a Motion for New Trial; then [13] and there, for the first time, I learned that the aforesaid Notice of Hearing did not contain a paragraph ordinarily found in such notices, said paragraph being an advice to the registrant that he could ask the Hearing Officer for the general nature and character of the adverse evidence in possession of said Hearing Officer.

6. I did not know until March 1, 1954, that I was entitled to ask anyone for such information and I did not ask the Hearing Officer for such information.

7. The selective service file now shows that the Hearing Officer obviously had adverse information and used it to my detriment in his report to the Attorney General, information that he never disclosed to me.

8. The aforementioned three page Notice of Hearing is attached to this affidavit and is made part hereof, as required by Rule 17 (a)(3) local rules.

/s/ WILLIAM CHERNEKOFF, JR.

Sworn to and subscribed in my presence this 15th day of March, 1954, by William Chernekoff, Jr.

[Seal]      /s/ J. B. TIETZ,  
Notary Public in and for Said  
County and State. [14]

Department of Justice  
Washington, D. C.

Notice of Hearing

(City) Los Angeles, (State) California, (Date)  
Nov. 19, 1952.

To: (Name of Registrant) William Chernekoff, Jr.  
(Street Address) 639 S. Vancouver Ave., (City) Los  
Angeles 22, (State) California.

You are hereby notified that before the under-  
signed Hearing Officer, at Room 403, (Building)  
Walter P. Story Building, (Street Address) 610 So.  
Broadway, (City) Los Angeles, (State) California,  
(Hour) at 2 p.m. o'clock, on (Month) December,  
(Day) 2, 1952, a hearing will be held by the Depart-  
ment of Justice to consider your claim to exemption  
from training and service under the Universal Mili-  
tary Training and Service Act by reason of your  
alleged conscientious objection to participation in  
war in any form. You have a right to be present at  
such hearing and to present any pertinent evidence  
in support of your claim. Enclosed is a copy of "In-  
structions to Registrants Whose Claims for Ex-  
emption as Conscientious Objectors Have Been Ap-  
pealed." You should read these instruction care-  
fully.

/s/ LOUIS J. EULER,

LOUIS J. EULER,

Hearing Officer, Special Assistant to the Attorney  
General.

cc: Registrant's File. [15]

Department of Justice  
Washington, D. C.

Instructions to Registrants Whose Claims for Exemption as Conscientious Objectors Have Been Appealed

Pursuant to the provisions of Section 6(j) of the Universal Military Training and Service Act and Section 1626.25 of the Selective Service Regulations, the Department of Justice will make an inquiry and hold a hearing with respect to the character and good faith of your claim for exemption from training and service under the said Act on the ground that you are conscientiously opposed to participation in war in any form.

1. The hearing will be conducted by the undersigned, a Hearing Officer duly designated by the Department of Justice as a Special Assistant to the Attorney General.

2. At the hearing you will be permitted to make a full and complete presentation of your claim. You may bring with you to the hearing as witnesses any persons who have personal knowledge of facts concerning your religious training and belief and concerning the character and good faith of your objections to participation in war in any form.

3. You may bring with you and submit at the hearing written statements of persons not present at the hearing containing facts and information within their personal knowledge concerning your

religious training and belief and the character and good faith of your objections to participation in war in any form. Such statements shall be sworn to or affirmed before a notary public or other person authorized to administer oaths. You may also submit [16] at the hearing any papers or documents, or certified copies thereof, tending to support your claim. If you are unable to appear personally at the hearing, you may mail all such statements, documents, etc., to me at the address given in the Notice of Hearing.

4. The hearing will not be in the nature of a trial or judicial proceedings, but will be informal and non-legalistic. You will not be required to adhere to the ordinary rules of evidence. It will not be necessary for you to be represented at the hearing by an attorney. You may bring with you a relative or friend or other adviser, who may sit with you at the hearing. Such person, whether an attorney or not, will not be permitted to object to questions or make any argument concerning any evidence or any phase of the proceeding. The hearing will at all times be under my direction and control. Violation of these instructions by you or your adviser may result in the termination of the proceeding.

LOUIS J. EULER,

Special Assistant to the  
Attorney General.

[Endorsed]: Filed March 15, 1954. [17]

[Title of District Court and Cause.]

MINUTES OF THE COURT—MARCH 15, 1954

Present: Hon. Harry C. Westover,  
District Judge.

Proceedings: For hearing motion of defendant for  
a new trial, filed March 3, 1954.

Attorney Tietz makes a statement and presents  
affidavit of defendant. Court makes statement.

Attorney Hochman makes a statement.

Attorney Tietz makes a further statement in sup-  
port of motion of defendant for a new trial.

Court Orders said motion of defendant for a new  
trial Denied, and that said affidavit of def't. Wil-  
liam Chernekoff, Jr., be filed.

Filed affidavit of defendant in support of motion  
for new trial.

EDMUND L. SMITH,  
Clerk;

By MARY O. SMITH,  
Deputy Clerk. [19]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

William Chernekoff, Jr.,  
639 S. Vancouver Ave.,  
Los Angeles 22, Calif.

Name and Address of Appellant's Attorney:

Pro. Per.

Offense:

U.S.C., Title 50, App., Sec. 462—Universal  
Military Training and Service Act.

Concise Statement of Judgment or order, giving  
date, and any sentence:

Committed to the Custody of the Attorney  
General or his authorized representative for  
imprisonment for a period of three years, im-  
posed December 28, 1953.

Name of institution where now confined, if not on  
bail:

Stay of execution granted until January 11,  
1954, not now in custody.

I, the above-named appellant, hereby appeal to  
the United States Court of Appeals for the Ninth  
Circuit from the above-stated judgment.

Dated: January 5, 1954.

/s/ WILLIAM CHERNEKOFF, JR.,  
Appellant.

[Endorsed]: Filed January 5, 1954. [20]

[Title of District Court and Cause.]

NOTICE OF APPEAL

(Second)

Appellant, William Chernekoff, Jr., resides at 639 So. Vancouver Ave., Los Angeles 22, California.

Appellant's attorney, J. B. Tietz, maintains his office at 534 Douglas Building, 257 South Spring Street, Los Angeles 12, California.

The offense was failing to submit to induction, U.S.C., Title 50 App., Sec. 462—Selective Service Act, 1948 as amended.

On December 28, 1953, after a verdict of Guilty, the Court sentenced the appellant to three years' confinement in an institution to be selected by the Attorney General and on March 15, 1954, the Court denied appellant's motion for a new trial.

I, J. B. Tietz, appellant's attorney, being authorized by him to perfect an appeal, do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

March 25, 1954.

/s/ J. B. TIETZ,

Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 25, 1954. [21]



[Title of District Court and Cause.]

EXTENSION OF TIME TO  
DOCKET RECORD

For good cause shown defendant-appellant is hereby given 50 additional days, to and including April 5, 1954, to prepare and docket the record on appeal.

Dated: February 9, 1954.

/s/ HARRY C. WESTOVER,  
Judge.

[Endorsed]: Filed February 9, 1954. [24]

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[Title of District Court and Cause.]

EXTENSION OF TIME TO  
DOCKET RECORD

For good cause shown defendant-appellant is hereby given 50 additional days, to and including May 25, 1954, to prepare and docket the record on appeal.

Dated: April 1, 1954.

/s/ HARRY C. WESTOVER,  
Judge.

[Endorsed]: Filed April 1, 1954. [25]

[Title of District Court and Cause.]

EXTENSION OF TIME TO  
DOCKET RECORD

For good cause shown defendant-appellant is hereby given 5 additional days, to and including May 30, 1954, to prepare and docket the record on appeal.

Dated: May 25, 1954.

/s/ ERNEST A. TOLIN,  
Judge.

[Endorsed]: Filed May 25, 1954. [26]

In the United States District Court, Southern  
District of California, Central Division

No. 23223 Crim.

Honorable Harry C. Westover, Judge Presiding.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM CHERNEKOFF, JR.,

Defendant.

REPORTER'S TRANSCRIPT  
OF PROCEEDINGS

Monday, December 14, 1953

Appearances:

For the Plaintiff:

LAUGHLIN E. WATERS

United States Attorney; by

BRUCE I. HOCHMAN,

Assistant United States Attorney.

For the Defendant:

IN PROPRIA PERSONA.

December 14, 1953, 10:00 A.M.

The Clerk: No. 41, 23223, United States vs. William Chernekoff, Jr., for trial.

The Court: Mr. Chernekoff, you do not have an attorney?

Mr. Chernekoff: No.

The Court: As a general rule, we get a stipulation from attorneys relating to the conduct of these cases. The first stipulation we would like to have is relative to the Selective Service file. Have you got a copy of the Selective Service file?

Mr. Hochman: Yes, your Honor. The defendant has already seen the stipulation and he has signed it.

The Court: Fine. I did not know he had signed it.

Mr. Hochman: And he has his own copy of the same.

The government asks that this be marked Government's Exhibit 1 for identification.

The Court: It may be marked Government's Exhibit 1 for identification only.

(The document referred to was marked Government's Exhibit No. 1 for identification.)

Mr. Hochman: We have, then, your Honor, the usual stipulation in these cases signed by the defendant appearing in propria persona and myself for the government.

The Court: The stipulation may be filed. [3\*]

Mr. Hochman: Pursuant to said stipulation, the

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

government requests that Government's Exhibit 1 for identification purposes be admitted into evidence.

The Court: It may be admitted into evidence.

The Clerk: So marked.

(The document referred to was received in evidence and marked as Government's Exhibit No. 1.)

Mr. Hochman: The government rests.

The Court: Now, Mr. Chernekoff, what is your defense? What do you say is wrong?

Mr. Chernekoff: I just wasn't given a fair chance by the draft board to prove my sincerity in being a conscientious objector.

The Court: You don't claim to be a preacher or minister?

Mr. Chernekoff: No. I am a member of the Molokan Christian Church. You have an affidavit there signed by my preacher to that effect.

The Court: I find that you have signed a refusal to be inducted into the armed services. The question has been raised in these other cases as to whether or not it is necessary for you to step forward. Were you ever asked to step forward?

Mr. Chernekoff: No.

The Court: You may proceed then.

Mr. Chernekoff: The Department of Justice claims that I [4] was not sincere in my beliefs. All I have here is proof of my sincerity.

The Court: What proof do you have?

Mr. Chernekoff: You have the affidavit, do you not, in the file?

The Court: I assume I have the whole file.

Mr. Chernekoff: I have four letters here from people where I work.

The Court: Some additional matter?

Mr. Chernekoff: Yes, eight or nine additional letters here.

The Court: Show the letters to the United States Attorney.

Mr. Chernekoff: To Mr. Hochman?

The Court: Yes.

Mr. Chernekoff: Yes. (Handing documents to Mr. Hochman.)

Mr. Hochman: May it please the court, we have here letters from associates of the defendant, not of his church, general statements as to his character and their subjective belief as to his sincerity. Some of the witnesses, some of the authors of the letters, are here in court. I should like to have them called, your Honor, those that are here.

The Court: All right.

Mr. Hochman: One or two of them. Then there will be no objection to those who are not here. [5]

The Court: The defendant is not familiar with court procedure. Which one do you want to call?

Mr. Hochman: Mr. Eddie Liege.

EDDIE LIEGE

called as a witness herein by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please, and state your name.

The Witness: Eddie Liege.

The Court: Inasmuch as the defendant is not familiar with court procedure, I will ask the questions and allow you to cross-examine.

Examination

By the Court:

Q. What is your business or occupation?

A. Rubbish collector.

Q. Do you know the defendant?

A. Yes, sir.

Q. How long have you known him?

A. Not quite a year.

Q. How did you know him, in what kind of association do you know him? Do you know him as a fellow employee?

A. No, sir, as a Bible student. He is a regular church-goer [6] on young people's night.

Q. Are you a member of the church?

A. Yes, sir.

Q. What church?

A. The United Molokan Christian Church.

Q. Is the defendant a member of the church?

A. Yes.

Q. What church?                   A. Same church.

(Testimony of Eddie Liege.)

Q. How long have you been a member of the church?

A. Well, you are a member from the time you are born, but if you don't go to church you don't participate.

Q. How long have you been participating then?

A. A little over a year.

Q. How long has the defendant been participating, to your own knowledge?

A. Longer than I have.

Q. Longer than you have?

A. Yes, sir, that I know of.

Q. Have you ever heard the defendant say anything about being conscientiously opposed to war?

A. Yes.

Q. When?

A. Various occasions, off and on, just talking about it and it being mentioned here and there. No definite time, no [7] definite place.

Q. Was anybody present besides you?

A. That I don't even recall. We all get together and talk over things or we will talk alone. We don't take notice of those things.

Q. What did he say, do you remember?

A. He is opposed to war, he is opposed—

Q. I said what did he say? What did he say to you?

A. The exact words, I can't remember. All I can give you, your Honor, is the feeling that I got from him and using my own words.



(Testimony of Eddie Liege.)

Q. Did he say he was opposed to war because of his church affiliations?

A. No. He is opposed to war because of God's law, it is God's will, because God does not want to kill, that's all. It is very simple.

Q. Are you opposed to war, too?

A. Yes, sir, I am, although I was in the service before.

Q. You were in the service?           A. Yes.

The Court: Is there any other information you want brought out from this witness?

Mr. Chernekoff: That is sufficient.

The Court: All right. You can cross-examine.

Mr. Hochman: Your Honor, with the terms of the defendant—— [8]

The Court: I can't hear what you are saying.

Mr. Hochman: I do not wish to take any undue advantage of the defendant in terms of my cross-examination, so I ask your Honor to ride herd, so to speak, on the United States Attorney so that the defendant will get his complete day in court.

### Cross-Examination

By Mr. Hochman:

Q. Mr. Liege, you testified, did you not, you have known the defendant for approximately a year?           A. Yes, not quite a year.

Q. That is approximately the time you joined the church, is that correct?

A. The time I started teaching the Bible class.

(Testimony of Eddie Liege.)

Q. Had you been in the church in terms of a participant earlier than that?

A. Not a complete participant. I went to church, but I did not have God in me, you can say.

Q. Do you know the age of the defendant?

A. I have never asked him. I don't know.

Q. How do you judge a man, Mr. Liege?

A. How do I judge a man?

The Court: Judge him for what?

Mr. Hochman: In terms of character, sincerity, integrity, [9] honesty.

The Witness: Well, just by the way he talks, what he does, and the way he acts. You can pretty well read a man.

Q. (By Mr. Hochman): Do you have to know him any particular length of time? A. No.

Q. Do you have to know anything of his background, what he did a year and a half ago, perhaps, two years ago?

A. That is all past. That doesn't matter.

Q. And you can judge a man by virtue of an evening's conversation with him?

A. You judge him according to that evening's conversation, yes.

Q. You would make a final decision as to the honesty, integrity and sincerity of that man on the basis of one evening's discussion?

A. You never make a final decision on a man's character, integrity, and so forth and so on, because it can always change, but according to what the man is then and what he is now, at the time you talk to

(Testimony of Eddie Liege.)

him, whether it was last night, last week, or whether you are going to talk to him in the future, you judge him at that time.

Q. Can the motivation of a man be religious to escape something?

A. Say that once more. [10]

Q. Can a man turn to religion, ostensibly, in other words in all appearances become an individual who goes to the church to escape something else? Do you understand the question?

A. I understand the question and I think it is unfair, because I can't say and I don't think you can or anybody else. No man knows what is in the other man's mind.

Q. Would you say a man's behavior over a period of time helps an individual determine what he is like as opposed to an evening's conversation?

A. Yes.

Mr. Hochman: I have no further questions, your Honor.

The Court: All right. You may step down.

(Witness excused.)

The Court: Now, have your next witness come up.

Mr. Chernekoff: Paul Lukianov.

Mr. Lukianov: If it please the court, I will tell the truth, but I won't swear.

The Clerk: Then you can affirm. [11]

## PAUL LUKIANOV

called as a witness by and on behalf of the defendant herein, having first duly affirmed to testify the truth, was examined and testified as follows:

The Clerk: Be seated, please, and will you state your name?

The Witness: Paul Lukianov.

The Clerk: Will you spell the last?

The Witness: L-u-k-i-a-n-o-v.

## Examination

By the Court:

Q. What is your business or occupation?

A. I am a building materials salesman.

Q. Where do you live?

A. Montebello.

Q. Do you know the defendant?

A. Yes, sir.

Q. How long have you known the defendant?

A. Oh——

Q. Approximately?

A. I forgot. I believe it was 1949.

Q. Do you belong to a church?           A. Yes.

Q. What church? [12]

A. Well, it is a branch of the Molokan religion.

Q. Does the defendant belong to a church?

A. Yes, sir.

Q. To what church?

A. The big church. It is another church of the Molokan religion.

Q. You and he don't belong to the same church?

(Testimony of Paul Lukianov.)

A. Yes, sir.

Q. Do you go to the same church?

A. Yes, sir, on occasion, for various occasions, weddings, and all that, but for actual immediately belonging, our family belongs to the Romanoff church and his family belongs to the big church.

Q. What connection have you had in the past with the defendant, a business connection, social, or religious connection?

A. He is my nephew by marriage.

Q. Nephew by marriage?           A. Yes, sir.

Q. You come in contact with him in his marriage relationship, is that right?

A. No, sir. I come in contact with him on social occasions. I have come in contact with him on a few things, knowing him in school or in other ways talking to him and hearing others talk of him. [13]

Q. Did you go to school with him?

A. No, sir. I am a bit older than he is. In the past year Eddie and I have been conducting a Bible class and he has been one of our students.

Q. In the past year?

A. Yes, sir; I believe so.

Q. Have you ever heard him say anything about being opposed to war?

A. One night I spoke on that subject myself, telling the children of the class, we were speaking on one of the Commandments, Thou Shalt Not Kill, and it came up under discussion a bit, and it seems so simple, but I knew in time they would be subject to a question like this here, and at the time I tried

(Testimony of Paul Lukianov.)

to give him a way to answer a question like that, but it always boils down to just the simple fact that Thou Shalt Not Kill with mind or in body.

Q. Did you hear the defendant say anything about it?

A. Yes, sir. In regard to that, the defendant, he brought up the fact that—I don't know the exact words, but it was all in the affirmative. It was the things that you can't elaborate upon. It is so simple, you know, and we try to sense it for what it is worth.

Q. You just accepted that he was a conscientious objector?

A. I just accepted it and he did, too. [14]

Q. Did he ever tell you he was conscientiously opposed to war?

A. In so many words, yes, sir.

Q. Was that from a religious standpoint or political standpoint or what?

A. No, he just said he didn't want to serve, he didn't want to go to war.

Q. Did he give you any reason?

A. Well, you are with a person as far as teaching and believeing is concerned, and you know exactly why he says a thing.

Q. I don't want to know that. I want to know what he said to you.

A. He asked me if I would write a letter of recommendation for him, make character reference or more or less a letter of acknowledgment as to knowing him. I knew why he was asking me to write the letter, so upon talking to him about that I asked

(Testimony of Paul Lukianov.)

him how he had been in his past. He was very honest with me. He told me some of the things he had done, the lessons he had learned, and in talking to him I—a man realizes when you are young, things happen to you, you see.

Q. We are only interested in one thing here.

A. A man devotes his time to the church. He comes to attend, he comes to a realization of something that he has got to live by, and you and him come to the same realization, you [15] know what he means.

Q. We can't be bound by——

A. Your Honor, there is no real way that you are going to ask a man every day what is it that he actually believes, and have him recite to you so you can at a future time recite the same words.

Q. Are you conscientiously opposed to war?

A. I am.

Q. From a religious standpoint?

A. Both religious and moral.

Q. Why religious?

A. Through the Bible teaching.

Q. Because of your church affiliation?

A. No, because I believe it.

Q. You believe it?           A. Yes.

The Court: Do you want to ask any other questions?

Mr. Chernekoff: Can I ask after he asks?

The Court: You can cross-examine.

(Testimony of Paul Lukianov.)

Cross-Examination

By Mr. Hochman:

Q. Mr. Lukianov, would you repeat how long you have known the defendant?

A. Well, I was trying to think of when I was married. [16] 1949, I believe.

Q. 1949? A. Yes.

Q. That is a good thing to remember, sir. This is an involved question. Please bear with me. June 25, 1950, the war in Korea broke out. You have known the defendant since 1949. From the time you have known the defendant until June 25, 1950, in that period of time would you have written a letter like this, would you then have vouched for his sincerity in his belief?

A. At that time I did not really know him like I know him now. There was a time when I, like Eddie and many other people here of the same type as Billy, were refusing proper guidance and we went down and enlisted ourselves. I spent actually five years. At the time it seemed like a pretty fair life. The trouble is that at the time I enlisted I was exactly under the same impression that he was at the time you are speaking of. If you come to more or less a worldly sense of living or worldly sense of obligation, you see, that is different. It is a very sincere thing with me because a man can lose five years of his life, he can lose his whole spiritual life without proper guidance. All consideration, all



(Testimony of Paul Lukianov.)

leniency should be given to a man to achieve, to attain, to receive proper guidance. He receives guidance from his fellow people here on earth. Through that a man can receive spiritual guidance, [17] which is more important.

Q. Does the church believe in smoking or drinking? A. No, sir.

Q. I want to be perfectly clear on this. Does it, for instance, permit liquor in the house for an occasional drink? I am not talking about in terms of a drunk, but in terms of occasional drinking, a family gathering.

A. Well, the elders of the church frown upon it very strongly. There are many of us in the religion who accept the religion for many of its basic beliefs and those are some of the things we sometimes seem to hedge about. It is a weakness of the flesh.

Q. Repeating this date of June 25, 1950, doesn't it strike you odd that religion in terms of the individual's past should change on or about the date when he would thereafter, as sure as death and taxes, be asked to serve? In other words, isn't it odd that suddenly——

A. You are speaking of the time Billy got picked up?

Q. I am asking you of his behavior before the outbreak of war as opposed to his behavior that you are describing in the past year.

A. The implication is all too clear.

Q. I am not trying to be subtle. Mr. Lukianov.

(Testimony of Paul Lukianov.)

A. Like I said, I repeat back, many of us are young people in the religion. We ourselves are being indoctrinated. [18] We ourselves are being taught a sincere way of living, righteous living, and youth, you don't accept that. It is hard to accept it. Sometimes the parents are a bit slow on the teaching and the kids themselves aren't receiving anything, and they refuse to receive it, you see. Then all of a sudden, it takes a volume to make them realize the teaching and all of a sudden one night we wake up and the young man says, "Here I am going to be asked to go forth and kill another man. Why?" Then he starts asking questions, and the minute he starts asking real questions, he begins to find answers that start to straighten him out as far as religion and those things are concerned. I believe Billy has come to a real sense of the right way of living.

Q. The other possibility, in your opinion, could not exist as to the metamorphosis, the change that occurred?

A. Oh, a man could stick his hand in a fuse box once, but he won't do it again.

Mr. Hochman: I have no further questions. I did not plan to call any other of the witnesses.

The Witness: Thank you.

The Court: That's all. You may step down.

(Witness excused.)

The Court: Do you have any objection to the letters?

Mr. Hochman: No. [19]

The Court: The letters may be received and marked Defendant's Exhibit A.

The Clerk: All as one exhibit, your Honor?

The Court: All marked as Defendant's Exhibit A in evidence.

(The documents referred to were received in evidence and marked as Defendant's Exhibit A.)

The Court: I will take the matter under submission and continue the matter to 2:00 o'clock on December 28. You be back at 2:00 o'clock on December 28. [20]

### Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 25th day of February, 1954.

/s/ S. J. TRAINOR,  
Official Reporter.

[Endorsed]: Filed May 25, 1954. [21]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT  
OF PROCEEDINGS

Appearances:

For the Plaintiff:

LAUGHLIN E. WATERS,  
United States Attorney; by  
BRUCE I. HOCHMAN,  
Assistant United States Attorney.

For the Defendant:

J. B. TIETZ, ESQ.,  
257 South Spring Street,  
Los Angeles, California.

Monday, March 15, 1954, 2:00 P.M.

The Clerk: No. 23223, United States vs. William Chernekoff, Jr.

The Court: Mr. Tietz, how long will you take on your motion?

Mr. Tietz: I hope not more than five or six minutes.

The Court: It shouldn't take very long. All right, come on and we will hear your motion and dispose of it.

Mr. Tietz: I want the defendant to sign an affidavit I am going to present. I am going to ask leave of court to present the affidavit. The rule seems to require it. I present the court with a statement signed by myself and the defendant.

The Court: All right.

Mr. Tietz: I would like to hand up this affidavit and hand a copy to the United States Attorney.

The Court: You ought to give a copy to the government.

Mr. Tietz: I am sorry to say the copy I am going to give the United States Attorney doesn't have the three-page mimeographed notice and the envelope in which it came from the hearing officer. I didn't have time to make copies of those.

The Court: Mr. Tietz, it isn't the duty or it isn't the right of the trial court to grant a motion for a new trial unless there is reason for the granting of the motion. I cannot grant a motion for a new trial unless I have some legal reason [2\*] for it. What is the legal reason?

Mr. Tietz: As I set forth, your Honor, in the motion and in the points and authorities, there is newly discovered evidence.

The Court: What is the newly discovered evidence?

Mr. Tietz: Newly discovered evidence of a kind that the defendant, without due diligence, could not have discovered. The defendant represented himself in the trial before your Honor.

The Court: That doesn't make any difference. I wanted the defendant to have counsel. He said he didn't have counsel. Now he comes in and says there is some evidence he could have gotten but he didn't know about it. That is not newly discovered evidence.

Mr. Tietz: It seems to me, your Honor, when it

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\*Page numbering appearing at top of page or original Reporter's Transcript of Record.

has now become clear that it is the law when an individual, a boy, one who doesn't know which end is up about a very technical subject, Selective Service, that when he receives a defective notice, a notice that utterly fails to have any mention in it that he can ask for vital information, and then when in his case it is clear that there was some adverse information that was used by the hearing officer and used by the Attorney General, that when he finds out later that he has been deprived of a right, which is the most essential right of due process, the right to be confronted with charges and to explain them as he [3] could have explained them, that he should have his chance to do that.

The Court: I will let the Circuit decide that. When I was handling criminal cases I ruled against you on several of these cases of defective notice. I don't know why I should change my opinion on it now.

Mr. Tietz: I think your Honor is mistaken on that. In the case of Rex Ashauer, there was a judgment of acquittal, and it was based on the defective notice. It had this added element, that the United States Attorney, himself, said to the court that because of this defective notice there can be reasonable doubt. It is true in a later case I came before your Honor with a defective notice and the United States Attorney handling that particular case did not feel as the other one did and also there was nothing else in that case that would go to show that he was prejudiced.

A defective notice, the defect being that you can

get adverse information, is not too material when there is no adverse information. Now, in this case there was adverse information. In the case I cite and repeat in the motion, I set forth in there Judge Pierson Hall, "Because he didn't know he could get advice from an advisor, because there was never a posting in the local board office that he could get advice from an advisor, and because of the defective notice which didn't tell him he could do certain things before the hearing officer, [4] those two things together make out a far different case than the other case."

The Court: You let the Circuit decide this matter. I don't think I am justified in granting a new trial.

Mr. Tietz: I think on the basis of the case I cited where the Solicitor General confessed error——

The Court: Maybe the government will confess error here.

Mr. Tietz: Maybe. I have seen it happen before.

The Court: What does the government have to say?

Mr. Hochman: The government agrees with your Honor. Let the Circuit decide.

The Court: Motion denied.

Mr. Tietz: Might I ask your Honor to reconsider——

The Court: The affidavit may be filed as of record in this case.

Mr. Tietz: Thank you. That is one thing I do want.

The Court: I will let you file your affidavit as of record in the case and let the Circuit decide.

Mr. Tietz: When I argued before your Honor, I was at a handicap in the Ashauer and in the Jones cases, I didn't have what I now have, and possibly if your Honor heard it, your Honor would look at it somewhat differently, that is that the Attorney General has adopted regulations which cover this point. Would that make any difference?

The Court: I am sorry. I have ruled upon this case. I [5] see no reason to change my mind. I will let the Circuit decide. If the Circuit decides I am wrong, it will be very easy for me to rectify it. [6]

#### Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 5th day of April, 1954.

/s/ S. J. TRAINOR,  
Official Reporter.

[Endorsed]: Filed May 25, 1954. [7]



[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 26, inclusive, contain the original Indictment; Stipulation; Judgment and Commitment; Notice of Motion for New Trial and Points and Authorities; Affidavit of William Chernekoff, Jr.; Notice of Appeal filed January 5, 1954; Notice of Appeal filed March 25, 1954; Designation of Record and Three Orders Extending Time to Docket Appeal and a full, true and correct copy of Minutes of the Court for December 28, 1953, and April 15, 1954, which, together with copy of Reporter's Transcript of Proceedings on December 14, 1953, and March 15, 1954, and the original exhibits, transmitted herewith, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 25th day of May, A.D. 1954.

[Seal]

EDMUND L. SMITH,  
Clerk;

By /s/ THEODORE HOCKE,  
Chief Deputy.

[Endorsed]: No. 14370. United States Court of Appeals for the Ninth Circuit. William Chernekoff, Jr., Appellant, vs. United States of America, Appellee. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed May 26, 1954.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 14370

WILLIAM CHERNEKOFF, JR.,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ADOPTION OF DESIGNATION

Appellant hereby adopts the Designation of Record heretofore filed in the District Court.

/s/ J. B. TIETZ.

[Endorsed]: Filed June 3, 1954.

In the United States Court of Appeals  
for the Ninth Circuit

No. 14370

WILLIAM CHERNEKOFF, JR.,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY ON  
APPEAL

The points upon which the appellant will rely in substance are:

1. The trial court erred in rendering a judgment against appellant and in failing to acquit him.

2. The trial court erred in failing to hold that the denial of the conscientious objector classification by the selective service system was arbitrary, capricious, contrary to law and without basis in fact.

3. The trial court erred in failing to hold that the appellant was denied procedural rights in that the local board did not have posted in a conspicuous place the name and address of an Adviser to Registrants as required by the Selective Service Regulations.

4. The trial court committed error in failing to hold that there was no compliance with army regula-

tions requiring, among other things, that an order be given to appellant to take the symbolic one step forward at the induction station.

5. Appellant was deprived of due process in connection with his hearing before the hearing officer of the Department of Justice in that the hearing officer sent appellant an obsolete and defective Notice to Appear, said notice not informing appellant that he had the right to request the general nature and character of the adverse evidence in the possession of the hearing officer.

/s/ J. B. TIETZ.

[Endorsed]: Filed June 3, 1954.

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